

Division's Air Quality Exhibit 3

MEMORANDUM OF UNDERSTANDING

BETWEEN

UTAH DIVISION OF OIL, GAS AND MINING

AND

UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

FOR

MINING OPERATIONS

Utah Department of Natural Resources, Division of Oil, Gas and Mining (DOGM) and Department of Environmental Quality (DEQ), hereby revise the Memorandum of Understanding dated January 2, 1986 and October 16, 1990, effective this 1st day of September, 1999.

ARTICLE I - PURPOSE

This Memorandum of Understanding provides an operating agreement by which DOGM and DEQ shall execute their respective responsibilities concerning regulation of the environmental impacts of surface and underground mining operations in the State of Utah to: avoid duplicative efforts; work in close coordination; and respond to mutual issues in a timely manner.

This is an agreement for the sole intent to coordinate permitting, compliance and enforcement activities, and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the State, nor does it relieve any person from their obligation in acquiring necessary permits or approvals from the agencies party to this agreement.

ARTICLE II - POLICY

DOGM is the designated regulatory authority for the State of Utah responsible for implementation and enforcement of a statewide program for the regulation of mining and reclamation activities under state and federal laws. DEQ is the designated regulatory authority for the State of Utah responsible for administering and enforcing environmental laws including radioactivity, air quality, water quality, drinking water and solid and hazardous waste management.

Therefore, it is the mutual desire of DOGM and DEQ to work in harmony for the common purpose of minimizing the adverse effects of mining activities on the environmental resources of the State.

ARTICLE III - ADMINISTRATION

Coal & Minerals Mining Operations

A. Permit Application

1. A pre-design conference will be scheduled as needed among the applicant, DEQ, and DOGM. When available to DOGM, such notification by DOGM to DEQ will include a map of the proposed development, and description of the operation, and the proposed duration of operations.
2. Based upon such notification and the pre-design conference, DEQ will advise the applicant in the pre-design meeting and/or in writing within 30 days of environmental permits and approvals required by DEQ and shall provide DOGM with a copy of such correspondence.

B. Mine Plan Review

1. Upon submission of a complete mining and reclamation plan to DOGM, DOGM shall, in consultation with DEQ, review the applicant's list of licenses, permits or approvals to determine whether or not required approvals for DEQ have been issued.
2. If DEQ has not issued the appropriate permits or approvals, DOGM will forward to the applicant a copy of DEQ's deficiency list regarding the appropriate permits and approvals.
3. If additional information is required by DEQ for any permit or approval, DEQ shall contact the applicant for such information. Copies of any such requests shall be provided to DOGM.
4. DEQ will make every effort to issue permits and approvals in a timely manner. Actual permit issuance may take from 90 to 180 days after an application is determined complete.
5. DEQ will coordinate with DOGM to ensure all appropriate controls set forth by State law are incorporated into environmental permits and approvals. With the intent of reducing duplication of effort and in the interest of best utilizing State resources, DEQ will utilize DOGM

comments, expertise and familiarity with proposed mining operations in the development of such permits and approvals to the maximum extent practicable.

6. DEQ will provide to DOGM public notices of proposed permits and copies of all final permits and approvals issued by DEQ.

C. Inspection Reports and Enforcement

1. DEQ will be the lead enforcement agency for addressing noncompliance with its environmental permits and approvals to ensure compliance with environmental performance standards set forth by applicable State law. DEQ will send copies to DOGM of any enforcement action relative to any non-compliance of environmental performance standards. To the extent resources allow, DEQ and DOGM agree to participate in efforts to coordinate joint inspections.
2. DOGM will notify DEQ of any Cessation Order or enforcement actions of an environmental nature. DOGM will also inform DEQ of any potential environmental hazards as a result of field inspections (including technical field visits.)

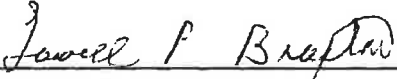
D. Minerals Mine Closure Requirements and Reclamation Cost Estimating

1. DOGM will consult with DEQ-Division of Water Quality (DWQ) when determining mineral mine closure requirements as part of the final reclamation surety cost estimating process to solicit input from DWQ. DOGM will consider all appropriate recommendations in determining the final reclamation cost estimate unless prohibited by the Utah Mined Land Reclamation Act.
2. DOGM may require periodic reclamation cost adjustments to the surety if determined appropriate and necessary to achieve compliance with the requirements of the approved and/or modified closure and reclamation plan.
3. DOGM will consult with DWQ prior to releasing that portion of the reclamation surety held for closure requirements.


ARTICLE IV - TERMINATION

This Memorandum of Understanding shall become effective when signed by the designated representatives of the parties. The memorandum shall remain in force until terminated by mutual agreement or by either party upon thirty (30) days written notice to the other party. Amendments to this agreement may be proposed by either party and shall be adopted upon written agreement by all parties.

This Memorandum of Understanding is approved as of this 1st day of September, 1999, by the following:



LOWELL P. BRAXTON
DIRECTOR
DIVISION OF OIL, GAS AND MINING



DIANNE R. NIELSON
EXECUTIVE DIRECTOR
DEPT. OF ENVIRONMENTAL QUALITY



Norman H. Bangerter
Governor
Dee C. Hansen
Executive Director
Dianne R. Nielson, Ph.D.
Division Director

State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340

*Under
Please file with MOU's*

September 28, 1990

Mr. Kenneth L. Alkema, Director
Division of Environmental Health
288 North 1460 West
Salt Lake City, Utah 84101

Dear Mr. Alkema:

Re: Amendment of January 2, 1990 Memorandum of Understanding between the
Division of Oil, Gas and Mining and the Department of Environmental Health,
revised December 22, 1990

The above-referenced Memorandum of Understanding (MOU) provides an operating agreement by which the Division of Oil, Gas and Mining (DOGM) and the Department of Environmental Health (DEH) shall execute their respective responsibilities concerning regulation of the environmental impacts of mining operations in the state of Utah. I believe that overall, the MOU has successfully promoted dialogue between our agencies, and in a large measure eliminated duplicative regulatory efforts.

A problem has emerged with respect to inspection of coal mining sites, which requires amending of portions of the MOU, last revised in December, 1988. Simply stated, the Utah Coal Regulatory Program (UCRP) requires an operator to be in compliance with all state and federal regulations that are incorporated into the mine-specific Mining and Reclamation Plan (MRP). Section C, page 4, #s 1 and 2 of the 1988 revision to the MOU attempted to implement a review by DEH of any NPDES/UPDES permit exceedences delineated by a DOGM inspection prior to DOGM's initiation of enforcement action required by the UCRP. The federal Office of Surface Mining (OSM), having oversight authority over the Utah Coal Regulatory Program, will not allow the UCRP an opportunity of discussing the fact of a UPDES/NPDES exceedence prior to taking enforcement action.

I believe that OSM's position may promote duplicatory regulation by our respective agencies. To further the resolution of that problem, I have asked OSM to initiate national level discussions with EPA regarding resolution of duplicate regulation.

In the mean time, in order to resolve the issue between DOGM and OSM, I have removed items 1 and 2 of Section C of the 1988 amended version of the MOU, and have enclosed 2 signed originals of the amended MOU. I believe that by simply

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Mr. Kenneth L. Alkema
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removing the parts of the MOU that are offensive to OSM, DOGM and DEH can operate their respective programs in the mandated manners, while avoiding "turf battles" that have emerged in my previous attempts to resolve this problem through MOU amendment. I believe the amended version is preferable to operating without a MOU.

We have both recognized the importance of identifying any duplicate enforcement actions and attempting to coordinate abatement actions and settlement agreements. DOGM will continue to communicate with your staff to meet our respective concerns.

Thank you for your help in resolving this issue. Please call if you have other suggestions or questions.

Best regards,

A handwritten signature in cursive script, appearing to read "Dianne", with a long horizontal flourish extending to the left.

Dianne R. Nielson
Director

Enclosure
cc: R. Hagen
D. Ostler
L. Braxton
MI78/114&115



Michael O. Leavitt
Governor
Kathleen Clarke
Executive Director
Lowell P. Braxton
Division Director

State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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INDU BOOK

October 11, 2000

TO: Users of Memorandum of Understanding between DEQ and DOGM

FROM: Pamela Grubaugh-Littig, Acting Associate Director of Mining *pgl*

RE: Guidance Memo to Clarify Permit by Rule in DEQ Regulations Pertaining to Mining

There are several permits required from DEQ. However, to avoid duplication of regulatory oversight, there are two instances where specific permits are not required, those under Solid & Hazardous Waste R315-318-2(2) and Ground Water Permits R317-6-6.2, for coal mining operations or facilities regulated under the Coal Mining and Reclamation Act.

The submission of an application for a ground water permit may be required only if the Executive Secretary of the Water Quality Board, after consideration of recommendations by DOGM, determines that the discharge violates applicable ground water quality standards, applicable Class TDS limits, or is interfering with a reasonable foreseeable beneficial use of the ground water.

DOGM is not required to establish any administrative or regulatory requirements which are in addition to the rules of DOGM for coal mining operations or facilities.

Be advised that the aforementioned provisions do not obviate the need for other permits issued by DEQ.

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cc: Fred Pehrson, DWQ
Rusty Lundberg, DWQ
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